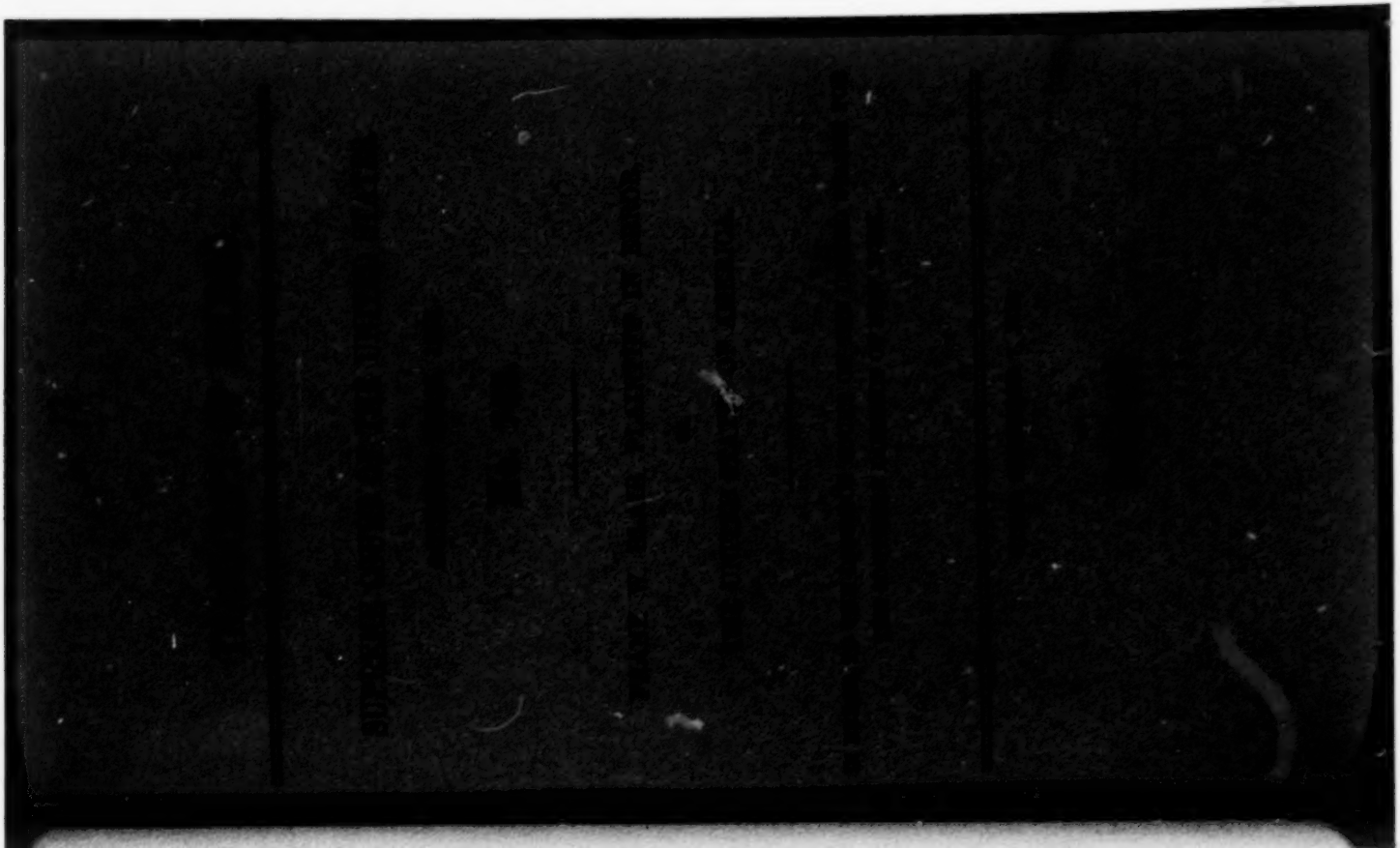

(26,849)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1918.

No. 763.

FRANK W. BLAIR, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES OF AMERICA.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

INDEX.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., DECEMBER 20, 1918.

1 *Writ of Error.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Honorable the Judges of the District Court of the United States for the Southern District of New York, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment and final order of a plea which is in the said District Court, before you, between the United States of America, plaintiff, and Frank W. Blair, respondent, a manifest error hath happened to the great damage of said respondent Frank W. Blair, as by his complaint appears: We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in said Supreme Court at Washington, within thirty days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness, the Honorable Edward D. White, Chief Justice of the said Supreme Court, the 3rd day of October, in the year of our Lord One thousand nine hundred and eighteen.

[Seal District Court of the United States, Southern District of N. Y.]

ALEX. GILCHRIST, JR.,
Clerk of the United States District Court,
Southern District of New York.

Allowed by
EDWARD E. CUSHMAN,
United States District Judge.

2 *Clerk's Certificate.*

UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, Alexander Gilchrist, Jr., Clerk of the District Court of the United States of America, for the Southern District of New York, in the Second Circuit, by virtue of the foregoing Writ of Error, and

in obedience thereto, Do Hereby Certify, that the following pages numbered from four to forty inclusive, contain a true and complete transcript of the record and proceedings had in said Court in the cause of Frank W. Blair, Plaintiff in Error, against The United States of America, Defendant in Error, as the same remain of record and on file in said office.

In Testimony Whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, in the Second Circuit, this sixth day of December, in the year of our Lord one thousand nine hundred and eighteen, and of the Independence of the United States the one hundred and forty-third.

[Seal District Court of the United States, Southern District of N. Y.]

ALEX. GILCHRIST, JR.,
Clerk.

Clerk's Fee for certifying Record, $9.00.
A. G. JR.,
Clerk.

3 [Endorsed:] File No. C15-65. District Court of the U. S., Southern Dist. of New York. Frank W. Blair, Plaintiff in Error, against The United States of America, Defendant in Error. Writ of Error. Martin W. Littleton, Attorney for Plaintiff in Error, Office and Post-Office Address, 149 Broadway, New York City. U. S. District Court, S. D. of N. Y.. Filed Oct. 30, 1918. Received Oct. 30, 1918. J. Haffer, U. S. Attorney's Office.

4 *Subpœna Duces Tecum.*

[SEAL.]

The President of the United States to: Frank W. Blair, Detroit, Mich., Greeting:

We Command you, That all business and excuses being laid aside you appear and attend before the Grand Inquest of the Body of the People of the United States of America for the Southern District of New York, at a District Court to be held in Room 426 at the United States Court House and Post Office Building, Borough of Manhattan, City of New York, at Forthwith to testify and give evidence in regard to an alleged violation of the statutes of the United States by and not to depart the court without leave thereof or of the District Attorney and that you produce at the time and place aforesaid, the following:

All records, correspondence, cancelled checks, letters received and carbon copies of letters sent by the Truman H. Newberry Senatorial Committee, or by any person acting for the said committee, which was organized to promote the candidacy of Truman H. Newberry for United States Senator at the primary election held on August

22nd, 1918, in the State of Michigan. Also a true copy of the bank account of the said committee or of any person acting for said committee, showing all receipts, disbursements, deposits and withdrawals made in connection with such candidacy; and all other papers, memoranda and all writings of every description relating to such candidacy.

And for a failure to attend and produce the aforesaid documents you will be deemed guilty of a contempt of Court and liable to the penalties of the law.

Witness, the Hon. Learned Hand, Judge of said United States District Court at the Borough of Manhattan, in the City of New York, on the 27th day of September, 1918.

ALEX. GILCHRIST, JR.,
Clerk.

FRANCIS G. CAFFEY,
United States Attorney for the Southern District of New York.

5 *Return on Service of Writ.*

UNITED STATES OF AMERICA,
Eastern District of Michigan, ss:

I Hereby Certify and Return that I served the annexed Subpœna Duces Tecum on the therein-named Frank W. Blair by handing to and leaving a true and correct copy thereof with him personally at Detroit in said District on the third day of October, A. D., 1918.

HENRY BEHRENDT,
U. S. Marshal.
By GEO. F. CALDWELL,
Deputy.

(Endorsed:) U. S. District Court, S. D. of N. Y., Filed Dec. 5, 1918.

6 *Presentment.*

In the District Court of the United States of America for the Southern District of New York. Of the October Term, in the year 1918.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

The grand jurors for the United States of America empaneled and sworn in the District Court of the United States for the Southern District of New York at the October Term of said court in the year 1918, upon their oath present, that, on October 8, 1918, said grand jurors were sitting as a grand jury of said court, in the Borough of Manhattan, in the City and County of New York, and in said Southern District of New York, inquiring, among other things,

concerning supposed violations of Section 125 of the United States Criminal Code and of the Federal Corrupt Practices Act, approved June 25, 1910, as amended, in connection with the verification, in said district, and with the filing, in said district, of reports, to the Secretary of the Senate of the United States, by Truman H. Newberry, as a candidate for Senator at the primary election held in the State of Michigan on August 27, 1918; that on that occasion Thomas P. Phillips, Frank W. Blair and Allan A. Templeton, each of the City of Detroit, in said State of Michigan appeared successively as witnesses for the United States before said grand jury in obedience to subpœna duces tecum theretofore issued from said court and duly served upon them, and were duly sworn by the foreman of said grand jury; that the counsel for the United States then and there, before said grand jury, propounded certain preliminary questions to each of said witnesses which each of said witnesses answered; that thereupon said counsel asked of each of said witnesses a question pertaining to the matter so being inquired of by said grand jury, and each of said witnesses then asked that he be informed of
7 the object and purpose of said inquiry and against whom it was directed, whereupon he was informed by said counsel that said inquiry was not directed against him the said witness; that thereupon each of said witnesses read to and left with said grand jury a typewritten statement to the effect that, upon advice of his counsel, he refused to answer any questions pertaining to said matter so being inquired of by said grand jury, for the reasons that said grand jury and said court were without any jurisdiction to inquire into the method and manner of the conduct of a campaign in Michigan for the primary election of a United States Senator, that said Federal Corrupt practices Act, as amended, is unconstitutional, that the Supreme Court of the United States had questioned the constitutionability of said Act, and that no Federal court or grand jury in any State had any constitutional authority to conduct an inquiry under said Act regarding a primary election for United States Senator; and that thereupon each of said witnesses was asked by counsel for the United States whether he refused to testify for the reason that so to do would incriminate him, to which he made no other answer than a reference to the reasons for his refusal to answer set forth in his statement which are in this presentment above specified.

And thereupon, in consideration of the premises, said grand jurors present said Thomas P. Phillips, Frank W. Blair and Allen A. Templeton to the court as contumacious witnesses, to be dealt with according to law and as to the court may seem best, to the end that said grand jury may without further delay or obstruction perform the function which under its oath it is required to perform.

ALBERT J. WEBBER,
Foreman.

8 (*Endorsement on Presentment.*)

Endorsed: United States District Court, Southern District of New York. Presentment of Thomas P. Phillips, Frank W. Blair and Allan A. Templeton, Grand Jury Witnesses for Contumacy. Albert J. Webber, Foreman. Filed U. S. District Court, October 10, 1918. S. D. of New York.

October 10, 1918.

Witnesses are directed to answer questions propounded them by the Grand Jury.

EDWARD E. CUSHMAN,
U. S. D. J.

9 *Presentment.*

In the District Court of the United States of America for the Southern District of New York, of the October Term, in the year 1918.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

The grand jurors for the United States of America empaneled and sworn in the District Court of the United States for the Southern District of New York at the October Term of said court in the year 1918, upon their oath present, that, on October 8, 1918, said grand jurors were sitting as a grand jury of said court, in the Borough of Manhattan, in the City and County of New York, and in said Southern District of New York, inquiring, among other things, concerning supposed violations of Section 125 of the United States Criminal Code and of the Federal Corrupt Practices Act, approved June 25, 1910, as amended, in connection with the verification, in said district, and with the filing, in said district, of reports, to the Secretary of the Senate of the United States, by Truman H. Newberry, as a candidate for Senator at the primary election held in the State of Michigan on August 27, 1918; that on that occasion Thomas P. Phillips, Frank W. Blair and Allan A. Templeton, each of the City of Detroit, in said state of Michigan appeared successively as witnesses for the United States before said grand jury in obedience to subpœnas duces tecum theretofore issued from said court and duly served upon them, and were duly sworn by the foreman of said grand jury; that the counsel for the United States then and there, before said grand jury, propounded certain preliminary questions to each of said witnesses which each of said witnesses answered; that thereupon said counsel asked of each of said witnesses a question pertaining to the matter so being inquired of by said grand jury, and each, of said witnesses then asked that he be in-

10 formed of the object and purpose of said inquiry and against whom it was directed, whereupon he was informed by said counsel that said inquiry was not directed against him the said witness; that thereupon each of said witnesses read to and left with said grand jury a typewritten statement to the effect that, upon

advice of his counsel, he refused to answer any questions pertaining to said matter so being inquired of by said grand jury, for the reasons that said grand jury and said court were without any jurisdiction to inquire into the method and manner of the conduct of a campaign in Michigan for the primary election of a United States Senator that said Federal Corrupt Practices Act, as amended, is unconstitutional, that the Supreme Court of the United States had questioned the constitutionality of said Act, and that no Federal court or grand jury in any State had any constitutional authority to conduct an inquiry under said Act regarding a primary election for United States Senator; and that thereupon each of said witnesses was asked by counsel for the United States whether he refused to testify for the reason that so to do would incriminate him, to which he made no other answer than a reference to the reasons for his refusal to answer set forth in his statement which are in this presentment above specified.

Afterwards, to wit, on October 10, 1918, said witnesses were presented to this court, as contumacious witnesses, by said grand jurors, for having so refused to answer questions; and, after hearing arguments of counsel for said witnesses and for the United States, the court ordered said witnesses to answer such questions before said grand jury.

On October 11, 1918, said witnesses were again severally called before said grand jury, and counsel for the United States again propounded to each of said witnesses questions pertaining to the inquiry aforesaid and each of said witnesses thereupon again, for the reasons
before assigned by him, refused to answer such questions:
11 and counsel for the United States then and there requested each of said witnesses, Frank W. Blair and Allan A. Templeton, to produce before said grand jury the documents called for in the subpœna served upon him as aforesaid, and each of said last named witnesses thereupon refused to comply with said request, giving the same reasons for so doing as he gave on the former occasion above mentioned.

Wherefore, in consideration of the premises, said grand jurors again present said Thomas P. Phillips, Frank W. Blair and Allan A. Templeton to the court as contumacious witnesses, to be dealt with according to law and as to the court may seem best, to the end that said grand jury may without further delay or obstruction perform the function which under its oath it is required to perform.

ALBERT J. WEBBER,
Foreman.

12 (Endorsement on Presentment:) C 15-65. 6637. Presentment by Grand Jury of Thomas P. Phillips, Frank W. Blair and Allan A. Templeton as contumacious witnesses. Filed U. S. District Court October 11, 1918, S. D. of New York.

October 11, 1918.

Ordered that the defendants Thomas P. Phillips, Frank W. Blair and Allan A. Templeton be remanded to the custody of the U. S.

Marshal to be committed to Ludlow Street Jail until they comply with the order of the Court of October 10th, 1918 directing them to answer the question put to them before the Grand Jury of this Court.

EDWARD E. CUSHMAN,
U. S. D. J.

13 United States District Court, Southern District of New York.

In the Matter of THOMAS P. PHILLIPS, FRANK W. BLAIR and ALLAN A. TEMPLETON, Grand Jury Witnesses, for Contumacy.

Before Hon. Edward E. Cushman, J.

New York, October 10, 1918.

Met pursuant to notice.

Appearances:

Francis G. Caffey, Esq., United States Attorney, for the Government;
Sylvester R. Rush, Esq., Special Assistant to the U. S. Attorney, and
David V. Cahill, Esq., Assistant U. S. Attorney, of Counsel.
Martin W. Littleton, Esq., Attorney for the Defendants.

The Court: The Grand Jury makes the following presentment: (See copy of presentment annexed to petition for writ of habeas corpus, as part of Exhibit A.)

After reading said presentment, the following proceedings were had, namely:

14 Who appears for the witnesses in opposition to the petition of the Grand Jury?

Mr. Littleton: I appear, if your Honor please, for the witnesses. I am Mr. Littleton, of the New York Bar, and I desire to submit some questions to the Court, if it is proper at this time to do so.

The three witnesses, Thomas P. Phillips, Frank W. Blair and Allan A. Templeton, were summoned from Detroit, Michigan, under subpœnas which I have before me, and which I desire to submit first to the Court, in which they are commanded forthwith to testify and give evidence in regard to an alleged violation of the statutes of the United States by blank, and not to depart the court without leave thereof or of the District Attorney, and that they produce at the time and place aforesaid the following—this was addressed to Mr. Blair——

"All records, correspondence, cancelled checks, letters received and carbon copies of letters sent by the Truman H. Newberry Senatorial Committee, or by any person acting for the said committee, which was organized to promote the candidacy of Truman H. Newberry for United States Senator at the primary election held on August 27, 1918, in the State of Michigan. Also a true copy of the

bank account of said committee or of any person acting for sai committee, showing all receipts, disbursements, deposits and with drawals made in connection with such candidacy; and a
15 other papers, memoranda, and all writings of every descrip tion relating to said candidacy."

Then follows the formal parts of the process, signed by the Cler of the Court.

The one addressed to Allan A. Templeton, of Detroit, Michigan also is the same character of subpœna, forthwith subpœnaing an calling on him to produce the same documents described in the fac of the subpœna.

The one addressed to Mr. Phillips is a "forthwith" subpœna t testify to "everything which you may know in regard to an allege violation of Section blank."

Then follows the formal parts of that subpœna, which does no embrace a call for papers and documents, and so forth.

First, I may say that it is a matter of record which the Grand Jury has certified, as your Honor has just read, that they appeared before the Grand Jury and answered preliminary questions.

Mr. Blair, Mr. Templeton and Mr. Phillips are residents of De troit, engaged in business there, banking and manufacturing busi ness. They responded to these subpœnas and came into the juris diction of the court. They declined to answer upon the grounds which are stated in the protests which they filed with the Grand Jury.

I want your Honor to see the response of the witnesses to the Grand Jury, which has been referred to in the Presentment handed up to your Honor, and which was as follows:

16 "I came here in obedience to a Grand Jury subpœna duces tecum, issued on the 27th day of September, 1918 and served upon me in the city of Detroit, directing me to appea here forthwith and give evidence in record to an alleged violation o the statutes of the United States by blank, and to produce"—th documents which have already been referred to in said subpœna—

"I obeyed said subpœna and came to New York City with such o the correspondence as I understood the subpœna to call for.

"I respectfully request that I be informed as to the object and pur pose of this inquiry and against whom it is directed.

"I have taken counsel upon the question as to whether I shoul testify before your body and as to whether I should produce th papers called for. I have some responsibility for and in connectio with the conduct of this campaign in Michigan and I respect fully decline to answer any questions or produce any paper, or letter or document, or book in connection with said campaign in Michi gan:

"First, because I am advised that the Grand Jury and courts o the Southern District of New York have no jurisdiction to inquir into the method and manner of the conduct of a primary election i Michigan, and, Second, because I am advised that there is no juris diction in any Grand Jury of the United States or any Federa

Court to conduct an inquiry or prosecute a trial for a viola-
17 tion of any constitutional law with reference to the carrying on or conduct of a primary election in the State of Michigan or any other state.

"I am advised that the Supreme Court of the United States has specifically called attention to the fact, although not deciding that the law enacted by Congress in 1910 and amended in 1911 and 1912 is unconstitutional in so far as it provides for the regul-tion of primary elections in the States. I do this without meaning to be disrespectful to you as a body or to you as men entrusted with the discharge of an official duty."

That protest was also filed by the other two of the three that are now before your Honor, whom I represent.

The position taken, in brief, was that on the face of the process issued to the witnesses upon which they were brought here, the purpose of the inquiry discloses a lack of jurisdiction in the Southern District of New York, for obviously, on the face of the process itself, this Grand Jury of the Southern District of New York would have no jurisdiction to inquire into a primary election held in the State of Michigan.

It might be made to appear, for other reasons, outside of the face of that subpœna—I do not say it is impossible not to make it appear—that some aspect of it might not be made relevant to some aspect in the State of New York; but on the face of it, as presented to the witness and as confronting him, there was nothing to
18 indicate, indeed there was more to indicate that it was an inquiry not before the Grand Jury in the Southern District of New York regarding primary elections in Michigan; and, obviously, the face of the process would show an ouster of jurisdiction in the Grand Jury of the Southern District of New York rather than an inclusion of jurisdiction in this Grand Jury for the Southern District.

In addition to that, I draw your Honor's attention to the fact that the whole inquiry, in whatever aspect it may be presented, either by the presentment of the honorable Grand Jury or in the aspect which counsel may suggest, rests solely for its jurisdiction and authority upon an act of Congress of June, 1910, amended in 1911 and 1912. This Act of Congress was what is known as the Corrupt Practices Act of Congress. It has been so called, although it is not, in terms, named that and is somewhat elaborate in its general provisions.

However, so far as it relates to the question which is to be presented here, it described the candidate, what a candidate is called, candidate for the House of Representatives, and candidate for Senator, and what is included in the term "candidate," and provides that a candidate for Congress, for the lower House, and a candidate for the Senate, shall, a short period before the primary and a short period after the primary, ten days, file with the Secretary of the Senate a certain statement regarding the expenditure of moneys, contributions and disbursements of moneys, to which I can

draw your Honor's attention if you will pardon me while I refer t
the section.

19 I may say that the Act itself is entitled Chapter 8-*a*, Co
tributions for Purpose of Influencing Elections.

If the Court please, on examination of this statute in connectio with the otherwise apparently remarkable or unusual features an inquiry, in the Southern District of New York, into the primar elections in Michigan, I made inquiry to see if there had not bee any effort or any attempt by any of the courts to determine th power of Congress to legislate in regard to the primary elections the State; and, of course, it is obvious why such an inquiry woul suggest itself in reference to the statute, because of the long histor of legislation in reference to the control of elections in the State, b various acts of Congress, from time to time, the period being twent four years in which they did control, and then a withdrawal by Co gress of its control of elections in the State, for members of th House and Senate, and the formulation of those rules for control b the legislatures of the various States. That history I need not a lude to more than that.

The Act of Congress on which this statute was passed and whic alone sustains or fails to sustain, is Article I, Section IV, of th Constitution.

I might not have the courage to challenge, on my own respons bility, however much I might be convinced of it, the constitu tionality of a statute of Congress or an Act of Congress, if I had n been led to do so by what I shall draw your Honor's attentio to.

20 I submit, therefore (after quoting from the case of Gra well v. United States, 243 U. S. 481) that the Corrupt Pra tices Act passed by the Federal Congress (Act of June —, 191 is unconstitutional and void and the witnesses were within the rights in challenging the power and authority of the Grand Ju to interrogate them on the matters described in the subpœnas a they were not required to answer the questions put to them.

The Court: Did you look over these minutes handed up to me part of the presentment—as part of what the presentment is base upon?

Mr. Littleton: I have not seen them. I would like to.

The Court: I believe it is customary here that they be considere as part of the presentment.

Mr. Littleton: I would like to look at those, if I may.

The Court: You may.

Mr. Littleton: I have read that, your Honor, and I understan those to be made a part of this proceeding.

The Court: When I was here before that was done. I belie this is the claim of one of your witnesses handed up with it.

Mr. Littleton: Very well; I would like to see just what is to b made a part of the record.

The Court: The statement of Mr. Templeton and Mr. Blai You have no objection to those being made a part?

Mr. Littleton: No. They are properly part of the proceedings.

21 The Court: Then they will become part of the presentment.

Mr. Littleton: The minutes also?

The Court: Yes.

(The Minutes referred to are as follows:)

UNITED STATES

vs.

JOHN DOE, RICHARD ROE, et al.

* * * * * * *

(*Testimony of Frank W. Blair, Given October 8, 1918.*)

FRANK W. BLAIR, called as a witness, being first duly sworn, testified as follows:

By Mr. Rush:

Q. Where do you reside, Mr. Blair?
A. Detroit, Michigan.
Q. How long have you resided there?
A. Since 1906.
Q. What is your occupation?
A. Banker and manufacturer.
Q. What position do you hold in a bank?
A. President of the Union Trust Company.
Q. How long have you held that position?
A. Since February 15, 1908.
Q. What factory are you connected with?
A. The president of the Charcoal Iron Company of America.
Q. Who else are interested in that company?
A. About two thousand stockholders, I think.
Q. Who are the officers of the company?
A. I am the President; Dr. Edwin Lodge is Vice-President; J. W. Mitchell is another Vice-President; Frank W. Hutchings is Vice-President and Treasurer; Mr. Henry H. Bingham is Vice-President and Secretary; George J. Webster is Vice-President and

22 General Manager.

Q. Who are the directors; the same men?

A. The same men, with the addition of Henry M. Campbell, of Detroit, and A. A. Fowler, of New York and F. M. Harrison, of New York. I would like to correct that. Mr. Bingham and Mr. Hutchings are not members of the Board of Directors.

Q. Did you hold any position during the month of August, 1918, in connection with the Truman H. Newberry Senatorial Committee?

A. I was Treasurer.

Q. When were you elected Treasurer?

A. I have a statement to make, (reading): Mr. Foreman and Gentlemen of the Grand Jury. I came here in obedience to a Grand Jury Subpœna duces tecum, issued on the 27th day of September, 1918 and served upon me in the City of Detroit, directing me to appear here forthwith and give evidence in regard to an alleged violation of the statutes of the United States by "blank" and to produce all records, correspondence, cancelled, checks, letters received and carbon copies of letters sent by the Truman H. Newberry Senatorial Committee, or by any person acting for the said committee, which was organized to procure the candidacy of Truman H. Newberry for United States Senator at the primary election held on August 22, 1918, in the State of Michigan; also a true copy of the bank account of said committee, or any person acting for said committee, showing all receipts, disbursements, deposits and withdrawals made in connection with such candidacy, and all other papers memoranda and all writings, of every description, relating to such candidacy. I obeyed said subpœna and came to New York City with such of the correspondence as I understood the subpœna to call for.

23 I respectfully request that I be informed as to the object and purpose of this inquiry and against whom it is directed.

By the Foreman: You decline to answer the question: "When were you elected Treasurer?"

A. I do not care to give any other answer.

Q. The law gives you the right to decline to answer any question if the answer thereto incriminates or degrades you. Now, does this question that is propounded by the Attorney General degrade or incriminate you?

A. (reading): I have taken counsel upon the question as to whether I should testify before your body and as to whether I should produce the papers called for. I have some responsibility for and in connection with the conduct of this campaign in Michigan and I respectfully decline to answer any question or produce any paper or letter or document or book in connection with said campaign in Michigan, first, because I am advised that the Grand Jury and courts of the Southern District of New York have no jurisdiction to inquire into the methods and manner of the conduct of a primary election in Michigan, and second, because I am advised that there is no jurisdiction in any Grand Jury of the United States or any Federal court to conduct an inquiry or prosecute a trial for violation of any constitutional law with reference to the carrying on or conduct of a primary election in the State of Michigan or in any other State.

I am advised that the Supreme Court of the United States has specifically called attention to the fact, although not deciding, *although not deciding* that the law enacted by Congress in

24 1910, and amended in 1911 and 1912, is unconstitutional in so far as it provides for the regulation of primary elections in the States. I do this without meaning to be disrespectful to you as a body or to you as men entrusted with the discharge of an official duty.

Q. (question re-read, as follows): When were you elected Treasurer? Do you decline to answer that question?

A. I can't give any other answer.

Q. Do you decline on the ground that it degrades or incriminates you?

A. I can't make any other reply than the one I have made.

Q. But you are not answering my question. You stand on the ground, then, that you decline to answer any question?

A. I stand on the ground as stated in that reply.

By Mr. Rush:

Q. Now, I desire to inform the witness, and I think he is entitled to that information, that the purpose of this prosecution is not to charge him with any offence; and therefore for in testimony which he may give before this Grand Jury he will stand immune from any prosecution. And likewise the laws of the State of Michigan provide that no prosecution for any offence mentioned in this act shall be maintained unless it shall be commenced within six months after the date of the primary election in connection with which the offence is alleged to have been committed. Now, bear in mind this—neither a complaining witness nor any other person who may be called to testify in behalf of the people in any such proceeding shall be liable to criminal prosecution under this act for any offenses in respect of which he shall be examined or to which his testimony shall relate, except to prosecution for perjury committed in such testimony. Now, do you claim that this testimony which you refuse to give would incriminate you or even tend to incriminate you or degrade you?

A. I have no other reply to give than that which I have given already.

Q. Except the question of the jurisdiction of this court, on the gro-nd of an invalid statute?

A. (No answer.)

By the Foreman:

Q. In other words, you challenge the Grand Jury of the Southern District of New York to be the proper body to investigate the proceeding for which you have been duly subpœnaed under the laws of the United States?

A. (No answer.)

Q. Mr. Blair, do you want me to give you five minutes to reconsider your determination as to the propriety of the Foreman of the Grand Jury directing you to answer certain questions put to you by the Attorney General?

A. I do not think I need any more time, Mr. Foreman. I am under advice of counsel.

Q. When did you arrive here in the City of New York, approximately?

A. I arrived here Friday last.

Q. In response to the subpœna?

A. Yes, sir.

Q. Who was the counsel that you had consulted as to the action on this subpœna?

A. Mr. Martin W. Littleton.

26 Q. Of the Borough of Manhattan, City and County of New York? And when did you see Mr. Littleton?

A. Saturday.

(Statement of the witness Blair, which was read during his testimony, is marked Exhibit 17, 10/8/18, for identification.)

By Mr. Rush: Who was the first to speak to you about claiming exemption from testifying?

A. I do not understand your question.

Q. Who was the first to mention or speak to you on the question of exemption on your testifying here?

A. The question arose in my own mind and I asked Mr. Littleton for advice.

Q. Did you bring the papers called for?

A. Yes.

Q. And those papers you refuse to produce, the same as you testified?

A. I have no other answer than that contained in the statement which I read to you.

By the Foreman:

Q. Mr. Blair, was this subpœna duces tecum served upon you, (handing witness a paper)?

A. Yes, sir.

Q. On the strength of this subpœna duces tecum you decline to produce before the Grand Jury the papers as called for in this subpœna duces tecum?

A. I make the same answer.

(Subpœna marked Exhibit 18, 10/18/18 for identification.)

The Foreman: I direct you to appear here tomorrow afternoon at two o'clock, sharp.

The Witness: Yes, sir.

(Witness excused.)

27 The Court (Judge Cushman): In so far as the substance of evidence provided for under the Corrupt Practices Act are concerned, no doubt you (meaning Mr. Littleton) are right; the only jurisdiction of Michigan or Washington if these affidavits, some of them were filed here, would be in that way. We are every day, of course, familiar with the Conspiracy Statute. The prosecution is brought under that. As you well understand, a conspiracy could be performed or acts performed in carrying it into effect in this District where the subsequent offence was either committed or about to be committed in Michigan.

Mr. Littleton: I do not understand that that is claimed by the Government at all.

The Court: This is an inquiry before the Grand Jury. What the course will be, whether there will be any indictment or not, no one can tell at this time. So far as any restraint upon the use of the conspiracy statute is concerned, and the wisdom of using it in cases where the prosecution for a substantive offence would answer as well or better, that rests rather in the sound discretion of the Executive, the United States Attorney, and the national legislature, if it should be abused notoriously.

Regarding the point that you have argued chiefly, there are two schools of construction of the Constitution: one is whether it should receive a narrow construction, or one as to whether it should receive a broad construction.

It seems to me that you have got to follow either the one or the other. If this language, "Times, places and manner of holding an election" occurred in the statute, it is very likely that
28 the Court would hold that that did not apply to primary conventions or nominating conventions or elections —; but in the constitution, especially in the national Constitution, where it was reserving to itself something out of the national fabric, it seems to me the language could hardly be broader: "Times, places and manner of holding elections." Part of the manner of holding an election is the method by which you get the names of the candidates before the people so they can vote on them. If you do not have any manner of getting those named before the electorate, why you do not have any election. Therefore, the method by which the candidates are to be presented to the people is part of the manner of holding an election and I direct the witnesses to answer.

Mr. Littleton: Your Honor, before you have made that direction final, I think your Honor might hear me on just the point about the conspiracy. The very case I have called your Honor's attention to in the United States Supreme Court decided that the conspiracy statute which was sought to be used in that case could not be held to apply to conspiracies for the purpose of corrupting elections. That is the West Virginia case. That is in fact already decided in that case, just what your Honor said they may be doing here. They cannot do that.

The Court: I must be wrong about that phase of the matter.

Mr. Littleton: On the question of your Honor's order directing the witnesses to answer, I think it is frank to say our purpose is to pursue our rights as we see them, with due respect to your
29 Honor, and I would ask that these minutes which have been made on the hearing be allowed to be transcribed at once, if it can be done with any sort of speed or diligence, to the end that we may have them, because they are a necessary apart of the further proceedings which we may take, and I would ask your honor that you do this; that the direction which you gave to the witnesses to answer might be postponed until these minutes can be transcribed, because I cannot move without them.

Mr. Rush: There is one matter to which I desire to call attention, to the statute respecting the commission of a substantive offence.

You will note this language in the statute: "Every statement herein required shall be verified by the oath or affirmation of the candidate, taken before an officer authorized to administer oaths; and the depositing of any such statement in a regular post-office, directed to the Clerk of the House of Representatives or to the Secretary of the Senate as the case may be, duly stamped and registered, within the time required herein, shall be deemed a sufficient filing of any such statement under any of the provisions of this act."

That would make under this act the filing place here as well as in Michigan.

The Court: That is, if the affidavit was made here and mailed here?

Mr. Rush: Yes, sir. Then again, suppose the affidavit was not true and a proceeding was sought to be had here under the perjury statute; the venue would be here and would be no place else.

30 Mr. Littleton: On that I would like to be heard, as the record is being made. Of course, the provision mentioned by the gentleman representing the Government, in which it is said that the dropping in a post-office shall be deemed sufficient filing under that statute, only means that so far as the filing is concerned as required by law it shall be deemed to be filed when put in the post-office; but it cannot operate to change the jurisdiction of evidence which may grow out of it.

The Court: The difficulty of a good deal of this is trying to anticipate whether an indictment will be returned, and if so, what kind of an indictment. I think it will be easier, so far as the courts are concerned, to wait and see whether there is any presentment against anybody or not.

Mr. Littleton: I understand that, if your Honor please, but I am pointing to the fact that the witnesses who challenge the jurisdiction of a court have a right, if they are right, to support their contentions and to have the question of jurisdiction determined, and determined in any other way except the method adopted.

The Court: This is not a final hearing for anybody, so everybody's rights will be protected and you can talk with Mr. Rush and see whether there is any objection to your having until tomorrow at two o'clock.

Mr. Littleton: Yes, it is a matter of convenience. I suppose I can arrange to have the minutes transcribed. I have not got them, of course, and I find the record here is a necessary part of any

31 step I have to take and it is humanly impossible to have it now, because it is just being taken.

The Court: Gentlemen (meaning the Grand Jury) you may retire and resume your inquiry.

The witnesses are directed to answer questions propounded to them by the Grand Jury.

Adjourned to Friday, October 11, 1918, at 2 P. M.

32 *Statement of Frank W. Blair when called before the Grand Jury on October* 11, 1918.

Ex. 23.
10/11/18.

Upon the two grounds previously stated by me, I must respectfully decline to answer any questions relating to the operations of the Truman H. Newberry Senatorial Committee, organized to promote the candidacy of Truman H. Newberry at the primary election held in the State of Michigan on August 27th, 1918. I do this without intending any disrespect to you as a body charged with the performance of certain duties.

Filed Oct. 25, 1918.

33 At a Stated Term of the District Court of the United States, for the Southern District of New York, held at the United States Court Rooms in the Borough of Manhattan, City of New York, on the 11th day of October, in the year of our Lord one thousand nine hundred and eighteen.

Present: The Honorable Edward E. Cushman, Judge.

U. S. Criminal Code.

THE UNITED STATES

vs.

FRANK W. BLAIR.

Ordered that the prisoner be remanded to the custody of the U. S. Marshal, to be committed to Ludlow Street Jail until the defendant Frank W. Blair complies with the order of the Court of Oct. 10, 1918. directing him to answer the questions put to him before the Grand Jury of this Court.

An extract from the minutes.

[SEAL.] ALEX. GILCHRIST, JR.,
Clerk.

(Endorsement:) Ordered that the prisoner be remanded to the custody of the U. S. Marshal to be committed to the Ludlow Street Jail until the defendant Frank W. Blair complies with the order of this Court of Oct. 10, 1918, directing him to answer the questions put to him before the Grand Jury of this Court.

EDWARD E. CUSHMAN,
U. S. D. J.

34 *Order of Commitment.*

At a Stated Term of the District Court of the United States for the Southern District of New York, held at the United States Court Rooms, in the Borough of Manhattan, City of New York, on the 25th day of October, 1918,

Present: Hon. Edward E. Cushman, Judge.

THE UNITED STATES OF AMERICA

v.

FRANK W. BLAIR.

The Grand Jury of the District Court of the United States, Southern District of New York, having heretofore on the 10th day of October, 1918, made a presentment to this Court in which they allege that said Grand Jury was, on October 8, 1918, inquiring concerning supposed violations of Section 125 of the United States Criminal Code and of the Federal Corrupt Practices Act, approved June 25, 1910, as amended, in connection with the verification in said Southern District of New York, and with the filing in said District, of reports to the Secretary of the Senate of the United States, by Truman H. Newberry as a candidate for Senator at the primary election held in the State of Michigan on August 27, 1918, and that said Frank W. Blair, Allan A. Templeton and Thomas P. Phillips, residents of the City of Detroit, Michigan, appeared as
35 witnesses before said Grand Jury in obedience to subpœnaes duces tecum, duly issued and served on them, and after being sworn each of said witnesses, to-wit, Frank W. Blair, Allan A. Templeton and Thomas P. Phillips, was asked certain questions pertaining to the matter so being inquired of by said Grand Jury and that the said Frank W. Blair refused to answer said questions on the ground that said Grand Jury and said court were without any jurisdiction to inquire into the method and manner of the conduct of a campaign in Michigan for the primary election of a United States Senator; and that said Federal Corrupt Practices Act as amended, was unconstitutional and that no Federal court or Grand Jury had any constitutional authority to conduct an inquiry under said Act regarding a primary election for United States Senator. Said presentment further charged that said witnesses were contumacious and should be dealt with according to law; and the said Frank W. Blair having appeared in person and by counsel, and said proceedings before the Grand Jury having been read, the Court after hearing the argument of counsel for the United States and for said Frank W. Blair, made an order on said 10th day of October 1918, directing said Frank W. Blair and the other witnesses aforesaid to answer the questions asked each of them before said Grand Jury; that thereafter, on October 11, 1918, the said Frank W. Blair was again called before the Grand Jury and asked the same ques

tions pertaining to the aforesaid inquiry which he had theretofore declined to answer, and said Blair again declined to answer said questions and to produce before the Grand Jury the documents called for in said subpœna, for the same reasons given on the occasion of his prior refusal; that thereafter, on the said
36 11th day of October, said Grand Jury made in open court a further presentment, charging that said Blair was a contumacious witness and should be dealt with according to law; and said Frank W. Blair appearing in person and by counsel;

Now, on reading said presentment and the proceedings before said Grand Jury, and after hearing the argument of counsel for the United States and for said Blair, and due deliberation having been had thereon, it is

Considered and Adjudged by the Court that said Frank W. Blair is guilty of a contempt of this court, because of his refusal to comply with its order to answer said questions; and it is further

Ordered, that said Frank W. Blair because of his contempt aforesaid, be remanded to the custody of the United States Marshal for the Southern District of New York, to be committed to Ludlow Street Jail until he complies with the order of the court made on the 10th day of October, 1918, directing him to answer the questions put to him before said Grand Jury; and it is further

Ordered, that this order be entered nunc pro tunc as of October 11, 1918.

EDWARD E. CUSHMAN,
United States District Judge.

O. K. as to form.
S. R. RUSH,
Spec. Asst. to Atty. Genl.

Filed Oct. 25, 1918.

(Endorsed:) U. S. District Court, S. D. of N. Y., Filed Oct. 25, 1918, nunc pro tunc as of Oct. 11, 1918.

37 *Petition for Writ of Error.*

District Court of the United States, Southern District of New York.

THE UNITED STATES OF AMERICA

against

FRANK W. BLAIR, Respondent.

To the Judges of the District Court of the United States for the Southern District of New York:

Now comes Frank W. Blair, the petitioner and respondent in the above-entitled cause, and respectfully shows that the District Court of the United States for the Southern District of New York did, on

the 11th day of October, 1918, find this petitioner guilty of contempt and a judgment and final order was entered on the 11th day of October, 1918, adjudging petitioner guilty of contempt because of his refusal to answer certain questions asked him before the Grand Jury for the Southern District of New York, and remanding him to the custody of the United States Marshal for said district, to be committed to Ludlow Street Jail until he complied with the order of the court made on the 10th day of October, directing him to answer said questions.

And your petitioner respectfully shows that in this record, proceedings and judgment in this case, lately pending against your petitioner, manifest errors have intervened to the prejudice
38 and injury of your petitioner, all of which appear more in detail in the assignment of errors which is filed herewith.

Wherefore, this petitioner respectfully prays that a writ of error may be allowed herein from the Supreme Court of the United States and that the record, proceedings, judgment and final order aforesaid may be removed from this court into said Supreme Court of the United States, to the end that the same may be in and by said court inspected, reviewed and considered and that the errors aforesaid may be corrected according to law and the aforesaid judgment and final order reversed, and that the proper order relating to security for costs, if any is required, shall be made and that a citation may issue according to law.

Dated Oct. 30, 1918.

MARTIN W. LITTLETON,
Attorney for Respondent Frank W. Blair.

The foregoing writ of error prayed for is hereby allowed, and the amount of the bond fixed at the sum of $250.00.

EDWARD E. CUSHMAN,
United States District Judge.

Dated, New York, October 30, 1918.

(Endorsed:) Received Oct. 30, 1918, F. G. Caffey, U. S. Attorney's Office. U. S. District Court, S. D. of N. Y. Filed Oct. 30, 1918.

39 *Assignment of Errors.*

District Court of the United States, Southern District of New York

THE UNITED STATES OF AMERICA

against

FRANK W. BLAIR, Respondent.

Now comes the respondent and plaintiff in error, Frank W. Blair, and in connection with his petition for a writ of error says that in the record, proceedings, judgment and final order aforesaid error has

intervened to his prejudice, and this respondent here assigns the following errors, to wit:

1. The court erred in making the judgment and order adjudging the respondent and plaintiff in error guilty of contempt of court in refusing to answer the questions asked him before the Grand Jury.

2. The Court erred in not holding that the Act of Congress, commonly known as the Federal Corrupt Practices Act (36 Statutes at Large, Chapter 392), as amended, was unconstitutional and void, at least so far as it attempts to regulate the holding of primary elections in the States.

3. The court erred in holding that Congress had power to enact said Federal Corrupt Practices Act.

4. The court erred in holding that said Grand Jury in the District Court of the United States for the Southern District of New York had power and authority to inquire into the matter described in the presentment made by said Grand Jury.

5. The court erred in holding that it had jurisdiction and authority to make the order committing respondent and plaintiff in error for contempt because of his refusal to answer the questions asked him before said Grand Jury.

6. The Court erred in not holding that the subpœna duces tecum issued by the District Court for the Southern District of New York, requiring plaintiff in error to appear before said Grand Jury and produce certain books, records and papers, constituted an unreasonable search and seizure, in violation of the Fourth Amendment of the Federal Constitution.

7. The court erred in holding that the District Court of the United States for the Southern District of New York had jurisdiction and power to issue said subpœna duces tecum for the purpose for which it was issued.

By reason whereof plaintiff in error and respondent prays that said judgment and order may be reversed.

Dated Oct. 30, 1918.

MARTIN W. LITTLETON,
Attorney for Respondent and Plaintiff in Error.

(Endorsed:) Received, Oct. 30, 1918. F. G. Caffey, U. S. Attorney's Office. U. S. District Court, S. D. of N. Y. Filed Oct. 30, 1918.

41 *Citation.*

UNITED STATES OF AMERICA, *ss:*

To Francis G. Caffey, Esq., District Attorney of the United States for the Southern District of New York, Attorney for Defendant in Error, Post Office Building, New York City; Alexander Gilchrist, Jr., Esq., Clerk, District Court of the United States, Southern District of New York, by the Honorable one of the Judges of the District Court of the United States for the Southern District of New York, in the Second Circuit.

To the United States of America:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to a writ of error filed in the Clerk's office of the District Court of the United States for the Southern District of New York, wherein Frank W. Blair is plaintiff in error and you are defendant in error, to show cause if any there be, why the judgment and final order rendered against said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Given under my hand at the Borough of Manhattan, in the City of New York, in the District and Circuit above-mentioned, this the 30th day of October, in the year of our Lord one thousand nine hundred and eighteen and of the Independence of the United States the One hundred and forty-third.

[Seal District Court of the United States, Southern District of N. Y.]

EDWARD E. CUSHMAN,
Judge of the District Court of the United States for the Southern District of New York, in the Second Circuit.

42 [Endorsed:] File No. C 15—65. District Court of the U. S., Southern Dist. of New York. Frank W. Blair, Plaintiff-in-Error, against the United States of America, Defendant-in Error. Citation on Writ of Error. Martin W. Littleton, Attorney for Plaintiff in Error, Office and Post-Office Address, 149 Broadway, New York City.—United States District Court, S. D. of N. Y. Filed Oct. 30, 1918. Received U. S. Attorney's Office, Oct. 30, '18. F. G. Caffey.

[Endorsed:] File No. —. United States Dist. Court, Southern Dist. of New York. The United States of America vs. Frank W. Blair. Martin W. Littleton, Attorney for Respondent and Plaintiff-in-Error, Office and Post-Office Adderss, 149 Broadway, New York City.

Endorsed on cover: File No. 26,849. S. New York D. C., U. S. Term No. 763. Frank W. Blair, Plaintiff-in-Error, vs. The United States of America. Filed December 7th, 1918. File No. 26,849.

BLAIR *v.* UNITED STATES.

TEMPLETON *v.* UNITED STATES.

PHILLIPS *v.* UNITED STATES.

ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

BLAIR *v.* UNITED STATES ET AL.

TEMPLETON *v.* UNITED STATES ET AL.

PHILLIPS *v.* UNITED STATES ET AL.

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

Nos. 763-768. Argued January 28, 1919.—Decided June 2, 1919.

It is the duty of this court to refrain from passing upon the constitutionality of an act of Congress when the interests of the party attacking it do not entitle him to raise the question. P. 278.

Held, that witnesses subpœnaed in a grand jury investigation of possible violations of the Corrupt Practices Act of June 25, 1910, as amended, and of possible perjury in connection therewith, had no standing to question the power of Congress, under Art. I, § 4, of the Constitution, to enact provisions for regulation and control of primary elections of candidates for the office of United States Senator. P. 279.

Under the Fifth Amendment and the legislation of Congress, a federal

Ex parte Siebold, 100 U. S. 371; *In re Sawyer*, 124 U. S. 200; *Holman* v. *Mayor of Austin*, 34 Texas, 668; *Interstate Commerce Commission* v. *Brimson*, 154 U. S. 447, 479.

Mr. Assistant Attorney General Porter, with whom *Mr. W. C. Herron* and *Mr. H. S. Ridgely* were on the brief, for the United States.

Mr. Justice Pitney delivered the opinion of the court.

Three of these cases come here on writs of error, the other three on appeals. The writs bring up final orders adjudging plaintiffs in error guilty of contempt of court because of their refusal to obey an order directing them to answer certain questions asked of them before a federal grand jury, and committing them to the custody of the United States marshal until they should comply. The appeals bring under review final orders discharging writs of habeas corpus sued out by appellants to review their detention under the original orders of commitment and remanding them to the custody of the marshal. Blair, Templeton, and Phillips are plaintiffs in error, as well as appellants.

It appears that in October, 1918, the federal grand jury of the Southern District of New York was making inquiry concerning supposed violations of § 125 of the Criminal Code (relating to perjury) and of the so-called Corrupt Practices Act of June 25, 1910, c. 392, 36 Stat. 822, as amended, in connection with the verification and filing in that district of reports to the Secretary of the Senate of the United States made by a candidate for nomination as Senator at a primary election held in the State of Michigan on August 27, 1918. Phillips was served with a subpœna requiring him to appear and testify before this grand jury. Blair and Templeton

were subpœnaed to appear and testify and also to produce certain records, correspondence, and other documentary evidence. All were served in the State of Michigan. They appeared before the grand jury in response to the subpœnas, were severally sworn, and were examined by counsel for the United States. Each witness, after answering preliminary questions, asked that he be informed of the object and purpose of the inquiry and against whom it was directed, whereupon he was informed by counsel for the United States that the inquiry was not directed against him (the witness). After this each witness read to and left with the grand jury a typewritten statement to the effect that upon advice of counsel he refused to answer any questions pertaining to the matter under inquiry, for the reason that the grand jury and the court were without jurisdiction to inquire into the conduct of a campaign in Michigan for the primary election of a United States Senator; that the Federal Corrupt Practices Act as amended was unconstitutional; and that no federal court or grand jury in any State had constitutional authority to conduct an inquiry regarding a primary election for United States Senator. Thereupon each witness was asked by counsel for the United States whether he refused to testify for the reason that to do so would incriminate him, to which he made no other answer than to refer to the reasons for his refusal as set forth in his statement.

The grand jury made a written presentment of these facts to the district court, with a prayer that the parties named might be dealt with as contumacious witnesses.

Upon the coming in of the presentment the witnesses appeared in person and by counsel in opposition to the petition of the grand jury and contended that the Corrupt Practices Act as amended was unconstitutional and void, referring to the opinion of this court in *United States* v. *Gradwell*, 243 U. S. 476, 487. A hearing was had which

went to the merits; the minutes of the grand jury were read and made a part of the presentment; and the matter was fully argued. At the conclusion of the hearing the court directed the witnesses to answer the questions propounded to them before the grand jury. They were again called, were asked the same questions, and again refused to answer for the same reasons before assigned. The grand jury immediately made a further presentment, whereupon the court, after hearing the parties, adjudged appellants guilty of contempt because of their refusal to comply with the order of the court, and remanded them to the custody of the marshal until they should comply.

Being in his custody, each of them presented to the district court a petition for a writ of habeas corpus; the writ was allowed, returnable forthwith; and the United States district attorney, in behalf of the marshal, made a motion to dismiss the writ, in effect a demurrer to the petition for insufficiency. After hearing, the court discharged the writ and remanded each of the petitioners to the custody of the marshal (253 Fed. Rep. 800); and the present writs of error and appeals were allowed.

The principal contention is that the Act of June 25, 1910, c. 392, 36 Stat. 822, and its amendments (Act of August 19, 1911, c. 33, 37 Stat. 25; Act of August 23, 1912, c. 349, 37 Stat. 360) are unconstitutional in so far as they attempt to regulate and control the selection by political parties at primary elections of candidates for United States Senator to be voted for at the general elections; it being insisted that the authority of Congress under § 4 of Art. I of the Constitution extends only to the definitive general election and not to preëlection arrangements or devices such as nominating conventions and primaries.

It is maintained further that, because of the invalidity of these statutes, neither the United States district court

nor the federal grand jury has jurisdiction to inquire into primary elections or to indict or try any person for an offense based upon the statutes, and therefore the order committing appellants is null and void.

The same constitutional question was stirred in *United States* v. *Gradwell*, 243 U. S. 476, 487, but its determination was unnecessary for the decision of the case, and for this reason it was left undetermined, as the opinion states. Considerations of propriety, as well as long-established practice, demand that we refrain from passing upon the constitutionality of an act of Congress unless obliged to do so in the proper performance of our judicial function, when the question is raised by a party whose interests entitle him to raise it.

We do not think the present parties are so entitled, since a brief consideration of the relation of a witness to the proceeding in which he is called will suffice to show that he is not interested to challenge the jurisdiction of court or grand jury over the subject-matter that is under inquiry.

Long before the separation of the American Colonies from the mother country, compulsion of witnesses to appear and testify had become established in England. By Act of 5 Eliz., c. 9, § 12 (1562), provision was made for the service of process out of any court of record requiring the person served to testify concerning any cause or matter pending in the court, under a penalty of ten pounds besides damages to be recovered by the party aggrieved. See *Havithbury* v. *Harvey*, Cro. Eliz. 130; 1 Leon. 122; *Goodwin* (or *Goodman*) v. *West*, Cro. Car. 522, 540; March, 18. When it was that grand juries first resorted to compulsory process for witnesses is not clear. But as early as 1612, in the Countess of Shrewsbury's case, Lord Bacon is reported to have declared that "all subjects, without distinction of degrees, owe to the King tribute and service, not only of their deed

and hand, but of their knowledge and discovery." 2 How. St. Tr. 769, 778. And by Act of 7 & 8 Wm. III, c. 3, § 7 (1695), parties indicted for treason or misprision of treason were given the like process to compel their witnesses to appear as was usually granted to compel witnesses to appear against them; clearly evincing that process for crown witnesses was already in familiar use.

At the foundation of our Federal Government the inquisitorial function of the grand jury and the compulsion of witnesses were recognized as incidents of the judicial power of the United States. By the Fifth Amendment a presentment or indictment by grand jury was made essential to hold one to answer for a capital or otherwise infamous crime, and it was declared that no person should be compelled in a criminal case to be a witness against himself; while, by the Sixth Amendment, in all criminal prosecutions the accused was given the right to a speedy and public trial, with compulsory process for obtaining witnesses in his favor. By the first Judiciary Act (September 24, 1789, c. 20, § 30, 1 Stat. 73, 88), the mode of proof by examination of witnesses in the courts of the United States was regulated, and their duty to appear and testify was recognized. These provisions, as modified by subsequent legislation, are found in §§ 861–865, Rev. Stats. By Act of March 2, 1793, c. 22, § 6, 1 Stat. 333, 335, it was enacted that subpœnas for witnesses required to attend a court of the United States in any district might run into any other district, with a proviso limiting the effect of this in civil causes so that witnesses living outside of the district in which the court was held need not attend beyond a limited distance from the place of their residence. See § 876, Rev. Stats. By § 877, originating in Act of February 26, 1853, c. 80, § 3, 10 Stat. 161, 169, witnesses required to attend any term of the district court on the part of the United States may be subpœnaed to attend to testify

generally; and under such process they shall appear before the grand or petit jury, or both, as required by the court or the district attorney. By the same Act of 1853 (10 Stat. 167, 168), fees for the attendance and mileage of witnesses were regulated; and it was provided that where the United States was a party the marshal on the order of the court should pay such fees. Rev. Stats., §§ 848, 855. And §§ 879 and 881, Rev. Stats., contain provisions for requiring witnesses in criminal proceedings to give recognizance for their appearance to testify, and for detaining them in prison in default of such recognizance.

In all of these provisions, as in the general law upon the subject, it is clearly recognized that the giving of testimony and the attendance upon court or grand jury in order to testify are public duties which every person within the jurisdiction of the Government is bound to perform upon being properly summoned, and for performance of which he is entitled to no further compensation than that which the statutes provide. The personal sacrifice involved is a part of the necessary contribution of the individual to the welfare of the public. The duty, so onerous at times, yet so necessary to the administration of justice according to the forms and modes established in our system of government (*Wilson* v. *United States*, 221 U. S. 361, 372, quoting Lord Ellenborough), is subject to mitigation in exceptional circumstances; there is a constitutional exemption from being compelled in any criminal case to be a witness against oneself, entitling the witness to be excused from answering anything that will tend to incriminate him (see *Brown* v. *Walker*, 161 U. S. 591); some confidential matters are shielded from considerations of policy, and perhaps in other cases for special reasons a witness may be excused from telling all that he knows.

But, aside from exceptions and qualifications—and

none such is asserted in the present case—the witness is bound not only to attend but to tell what he knows in answer to questions framed for the purpose of bringing out the truth of the matter under inquiry.

He is not entitled to urge objections of incompetency or irrelevancy, such as a party might raise, for this is no concern of his. *Nelson* v. *United States*, 201 U. S. 92, 115.

On familiar principles, he is not entitled to challenge the authority of the court or of the grand jury, provided they have a *de facto* existence and organization.

He is not entitled to set limits to the investigation that the grand jury may conduct. The Fifth Amendment and the statutes relative to the organization of grand juries recognize such a jury as being possessed of the same powers that pertained to its British prototype, and in our system examination of witnesses by a grand jury need not be preceded by a formal charge against a particular individual. *Hale* v. *Henkel*, 201 U. S. 43, 65. It is a grand inquest, a body with powers of investigation and inquisition, the scope of whose inquiries is not to be limited narrowly by questions of propriety or forecasts of the probable result of the investigation, or by doubts whether any particular individual will be found properly subject to an accusation of crime. As has been said before, the identity of the offender, and the precise nature of the offense, if there be one, normally are developed at the conclusion of the grand jury's labors, not at the beginning. *Hendricks* v. *United States*, 223 U. S. 178, 184.

And, for the same reasons, witnesses are not entitled to take exception to the jurisdiction of the grand jury or the court over the particular subject-matter that is under investigation. In truth it is in the ordinary case no concern of one summoned as a witness whether the offense is within the jurisdiction of the court or not. At

least, the court and grand jury have authority and jurisdiction to investigate the facts in order to determine the question whether the facts show a case within their jurisdiction.

The present cases are not exceptional, and for the reasons that have been outlined we are of opinion that appellants were not entitled to raise any question about the constitutionality of the statutes under which the grand jury's investigation was conducted.

Final orders affirmed.